

DOCKET FILE COPY ORIGINAL

VERNER · LIIPFERT
BERNHARD · McPHERSON ^{BY} HAND
CHARTERED

901 - 15TH STREET, N.W.
WASHINGTON, D.C. 20005-2301
(202) 371-6000
FAX: (202) 371-6279

RECEIVED

FEB - 7 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

WRITER'S DIRECT DIAL
(202) 371-6000

February 7, 2000

VIA HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

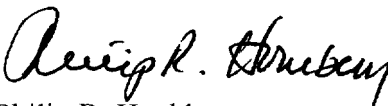
**Re: Comments of the National Basketball Association
 in CS Docket No. 00-2**

Dear Ms. Salas:

Enclosed for filing please find the original and nine (9) copies of the Comments of the National Basketball Association in the above-referenced docket.

Please stamp and return to this office with the courier the enclosed extra copy of this filing designated for that purpose. Please direct any questions that you may have to the undersigned.

Respectfully submitted,


Philip R. Hochberg

Enclosures



Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

FEB - 7 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Matter of:

Implementation of the Satellite Home
Viewer Improvement Act of 1999

Sports Blackout Issues

)
)
)
)
)
)

CS Docket No. 00-2

**COMMENTS OF
NATIONAL BASKETBALL ASSOCIATION**

The National Basketball Association ("NBA") hereby files the enclosed Comments before the Federal Communications Commission in CS Docket No. 00-2, in response to the Notice of Proposed Rulemaking ("Notice"), issued on January 7, 2000 concerning the implementation of the Satellite Home Viewer Improvement Act ("SHVIA").¹ Although the Commission raises a number of issues in the Notice, the NBA's initial Comments are limited to the sports blackout rule.²

As the Commission recognizes in the Notice, Congress enacted Section 339 of the Communications Act to provide sports blackout protection with respect to "the signals of nationally distributed superstations" and "the signals of network stations."

¹ Enacted, November 29, 1999, as part of Pub. L. No. 106-113, 113 Stat. 1501, and codified in various sections of Titles 17 and 47 of the United States Code. The Notice also deals in part with the adoption of network nonduplication and syndicated exclusivity rules.

² See specifically, Notice at Paras. 24-29.

The NBA urges the Commission to promulgate regulations to the new legislation that would ensure that (1) the same sports blackout protection that the Commission has provided for decades with respect to cable and other non-broadcast forms of television distribution (e.g., Open Vide Systems) is afforded with respect to satellite television distribution; (2) the transmission of any broadcast signal by a satellite carrier (whether the signal of a network affiliate, superstation, a local independent station or some other type of stations) carry with it the obligation to provide sports blackout protection; and (3) no satellite subscribers should be exempt from the effects of the sports blackout protections.³

BACKGROUND

For many years, the NBA has adopted policies for the distribution and exposure of its entertainment protect aimed at ensuring that as many fans as possible have the opportunity to see NBA games in person and on television. By balancing the need to maximize attendance and viewership, the NBA can present on television a more exciting and compelling product which enables the NBA to compete more effectively against other sports and entertainment products and to generate greater revenues (since gate receipts and proceeds from national and local television contracts are two of the largest sources of revenue for the league).

³ In addition, the NBA joins the position taken by the National Football League and National Hockey League with respect to the “unitary nature” of regionalized network television packages and urges the Commission to permit local affiliates to exercise network nonduplication rights against the importation into their markets of other games which are part of the same package, but broadcast outside of that market in other regions of the country.

On four different occasions – in 1961,⁴ 1973,⁵ 1996,⁶ and 1999⁷ – Congress has recognized the importance of protecting sports teams against the importation of distant signals carrying the telecast of a game in which such team plays.

The Commission also has consistently recognized that the importation of distant network, superstation, or independent station signals imperil attendance at games. For example, in the Sport Blackout proceeding held regarding cable in 1975, the Commission correctly observed that:

in the case of cable television importations of blacked out home games, the ultimate effect of frustrating local blackouts might be to reduce overall sports telecasts ... [which could] force sports clubs to extend their blacked out zone of protection to include all distant stations which may be carried by local cable television systems. Thus, the games would be available to fewer television viewers, contrary to our communications policy and the sports broadcasting policy of Congress.⁸

The rationale underlying the Commission's decision twenty-five years ago to require cable systems to provide sports blackout protection is still pertinent today -- and is why the sports blackout rules, consistent with Congress's intent, must extend to satellite distribution and each station that is retransmitted.

⁴ Pub. L. 87-331, 75 Stat. 732 (1961), as amended by Pub. L. 89-800, 80 Stat. 1515 (1966) and codified at 15 U.S.C. §§1291-93.

⁵ Pub. L. 93-107, ___ Stat. ___ (1973), codified at 47 U.S.C. §332 (expired December 31, 1975).

⁶ Pub. L. 104-104, 110 Stat. 56 (1996).

⁷ Supra Note 1.

⁸ Report and Order in In re Amendment of Part 76 of the Commission's Rules and Regulations Relative to Cable Television Systems and the Carriage of Sports Programming, Docket No. 19417, 54 FCC 2d, 265, 282, 34 RR2d 683, 704 (1975).

ARGUMENT

- (a) **The Commission's existing sports blackout rules that apply to cable and other forms of non-broadcast distribution should apply to satellite distribution.**

In enacting SHVIA, Congress sought to "level the playing field" between cable and satellite.

With respect to sports blackouts, Congress, with specific references to Section 76.67 in both Section 339(b)(1)(A) and (b)(1)(B), has evidenced its expectation that the same framework for sports blackouts that already exists for cable should be extended to satellite (just as the Commission extended the cable sports blackout rules to Open Video Systems in 1996).

Moreover, the same policy considerations underlying the cable rules apply equally to satellite. Just as the cable blackout helps promote and protect home attendance and local non-broadcast transmissions of games, so too will a satellite blackout. It makes no difference whether a game is available on cable or satellite – if it can be imported on television, fans will be less likely to attend in person. Indeed it would be unfair, illogical and harmful to sports teams, leagues and fans, for example to require cable systems and Open Video Systems serving viewers in Miami to blackout the KCAL-TV, Los Angeles, broadcast of an NBA game between Los Angeles Lakers and the Miami Heat, but to permit a satellite distributor serving the Miami viewers not to blackout KCAL's game telecast.

- (b) **The Commission's sports blackout rules should be applied to all satellite-distributed stations.**

Each type of station that the Commission might be required to recognize in connection with SHVIA -- (i) network affiliates; (ii) nationally distributed superstations (network affiliates);

(iii) nationally distributed superstations (independents); and (iv) new superstations (independents which are not “nationally distributed superstations”) -- stations should be subject to the same sports blackout provisions.

There is, of course, no principled reason to treat any type of station differently with respect to the sports blackout rules because an imported game telecast -- whether carried by a network affiliate, superstation or independent station -- causes the same damage to team attendance.

There is also no technological nor economic reason to draw any such distinction. The major satellite carriers already perform blackouts of sports programming pursuant to geographic restrictions agreed upon in their contracts with regional sports networks, sports leagues and other packagers of sports programming. And as long as a satellite distributor carries a single nationally distributed superstation -- all of which carry sports programming -- it will have to employ the requisite technology to perform blackouts.

Even if satellite carriers were not already other performing blackouts, Congress made it clear that the Commission should require compliance with the same sports blackout rules to which cable systems must adhere. As noted by Congress in the Joint Explanatory Statement:

These [new network station blackout] regulations under subparagraph (B) are to be imposed “to the extent technically feasible and not economically prohibitive” with respect to the affected parties. The burden of showing that conforming to rules similar to cable would be “economically prohibitive” is a heavy one. It would entail a very serious economic threat to the health of the carrier. Without that showing, the rules should be as similar as possible to that applicable to cable service.⁹

⁹ (Emphasis added.) Joint Explanatory Statement at 145 Cong. Rec. at H11796 (November 9, 1999).

In sum, the rules for all stations should be the same and simple: the importation of a game telecast on a distant signal should be prohibited – regardless whether the signal is of a distant network affiliate, superstation or independent station – unless the game is being broadcast over-the-air locally.

- (c) **No satellite subscribers within the specified blackout zone should be exempt from sports blackouts.**

Just as there is no principled policy or technological reason to distinguish between the types of station with respect to the sports blackout rules, there is also no reason to limit the scope of the blackout rules within the “zone of protection.”

As discussed above, the existing major satellite carriers, unlike cable systems, are able to perform – and routinely do perform – blackouts of specific subscribers (though the use of zip code information and individually addressable satellite “IRDs”) in order to comply with geographic restrictions and blackout requirements imposed in their programming contracts.

Moreover, the fact that some viewers in the zone of protection may be “unserved” within the meaning of SHVIA should have no bearing on whether those viewers are entitled to receive home game telecasts via distant signals. Indeed, as the Commission has recognized, the purpose of the sports blackout rule is not to protect viewing of a local station, but rather to protect the home gate of local sports events.

Similarly, the Commission’s concern about subscribers who use post office boxes or rural route numbers seems misplaced. Despite their mailing address, every dish has a physical location

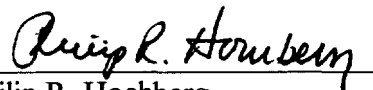
which can be identified and plotted -- and which the satellite distributors typically use -- to determine whether a subscriber is within or without a particular protected area.¹⁰

CONCLUSION

For the reasons stated above, the National Basketball Association urges adoption of regulations consistent with the positions taken.

Respectfully Submitted,

NATIONAL BASKETBALL ASSOCIATION



Philip R. Hochberg

Its Attorney

Verner, Liipfert, Bernhard, McPherson & Hand

901 15th St., NW, Suite 700

Washington, D.C. 20005

(202) 371-6000

¹⁰ The Commission questions whether there should be situations, as in the case of cable systems with fewer than 1,000 subscribers, whether satellite blackouts would be required. For the reasons stated here, the NBA believes that no exceptions to the sports blackout rules should be permitted.